

GENERAL AGREEMENT ON  
TARIFFS AND TRADE

RESTRICTED

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LIST OF PRIORITY ISSUES IN THE ANTI-DUMPING FIELD

Submissions by Governments

Addendum

The following communication has been received from Australia.

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I have attached some notes on the Australian practices in regard to the issues on which the Committee on Anti-Dumping Practices has agreed to give priority consideration (reference COM.AD/W/77).

These notes have been prepared by the Australian Department of Business and Consumer Affairs.

Sales at a loss

Australia recognizes that the selling of goods at a loss may from time to time become a business practice designed to overcome particular circumstances and dependent upon a variety of market influences, for example, excess stock, over-production or reduction in product demand. However, sales at a loss should not be regarded as indicative of the normal or ordinary course of trade in any particular commodity.

When the existence (or threat) of material injury to an industry can be demonstrated to be caused by export sales at a loss then such sales must be regarded as having an unfair influence on the trading and marketing balance of the affected country.

The practice of obtaining production materials at prices below cost without, in turn, including an appropriate adjustment to the cost of the end product may also be regarded as unfair if resulting material injury (or threat thereof) to an industry can be substantiated.

Essentially, Australia would seek to ascertain a fair market value in the normal course of trade, disregarding any influences attributable to temporary price cutting or contrived or special circumstances.

Determination of the period of time over which sales at a loss are made and ascertainment of the period intended (if any) to allow for recovery of these losses are two elements that need to be additionally established as matters of fact prior to considering possible rejection of such sales for the establishment of normal values.

Equitable computation of normal values in such cases may be reflected through a comparative evaluation of the relationship between the cost of producing goods and the ultimate selling prices being achieved. Identification of a margin which reflects reasonable consistency with the trade in general of the product under examination may in fact remove concern for acceptance of the nominally indicated pricing structure.

In addition, Australia's anti-dumping legislation enacts specific provisions governing use of the "constructed value" alternative for the setting of normal values in cases where, inter alia, domestic sales at a loss have been rejected because of non-compliance with the accepted "ordinary course of trade" criteria. These requirements encompass the actual costs of production, delivery charges, selling expenses and, if necessary, a notional rate of profit, established on the basis of all factual data available which may be indicative of the acceptable normal trading pattern for the goods in question.

The accounting principles of the industry under examination would also be closely scrutinized as a matter of course, to ensure a reasonable apportionment of the fixed and variable costs associated with producing and selling the merchandise. With regard to practical assessment of the available data associated with each investigation, Australia takes cognizance of the individual costing factors and accounting methods utilized by the manufacturer and/or supplier on a case-by-case basis. Further clarification of any contentious issues is obtained by convening meetings of interested parties.

#### Allowances relating to price comparability

Australia has incorporated the provisions of Article 2(f) of the Code in its anti-dumping legislation in a manner designed to allow for flexibility in administration and to enable consideration of each case on its individual merits. The necessity to prescribe exhaustive legislative parameters has not arisen, nor is such a need foreseen in the future.

In examining the pricing structure of goods the administering authority takes into consideration factors such as quantities, minor differences in specifications, levels of sale, advertising and warranty arrangements, delivery charges, packaging differences and payment terms which can give rise to variations between export and domestic prices. However, the responsibility of substantiating these and other variations rests fully with the overseas exporter of the goods under examination and "due allowance" adjustments will only be considered on receipt of satisfactory conclusive evidence that an allowance is appropriate.

With regard to the quantification of adjustments, market values reflecting acceptable accounting practices in the usual course of domestic trade would be regarded as an equitable point around which to base "due allowance" considerations. In circumstances involving comparative examination of notional or hypothetically created sales because of, inter alia, quantity, quality or level of sale adjustments, recognition of acknowledged commercial practices (e.g. discounting) will be accorded appropriate allowance, provided reasonable levels of cost allocation and profit would ensue from such transactions.

#### Regional protection

Australia recognizes that, because of particular circumstances, separately competitive regional marketing divisions may become readily identifiable within the total structure of a domestic industry.

Although the closely-knit marketing patterns which exist in Australia would not generally demonstrate any significant need for assessment of injury on a regional basis it is appreciated that the facility existing within Article 4(a)(ii) of the Anti-Dumping Code is designed to accommodate such a situation in exceptional circumstances and within prescribed parameters.

However, with regard to placing limitations on the actual collection of dumping duty on products destined only for consumption within a regionally defined area, Australia would support any move to qualify Code Article 8(e) to allow such action only when permitted by domestic law.

Certainly, the difficulties associated with the identification of specific shipments, the policing of the intended end-destination thereof and the suggestion that duties may be imposed on all areas unless assurances are given, are matters worthy of examination in terms of realistic contemporary administration of Article 8(e) of the Code.

#### Price undertakings

Accepting that the ultimate intent of any anti-dumping action is the removal of material injury caused or threatened by the unfair practice of marketing goods at less than their normal value, the proposition of accepting voluntary price undertakings from exporters must be regarded as a viable means of achieving that intent.

Australia has adopted an approach whereby price undertakings are neither requested nor demanded, although they are frequently tendered by exporters in an endeavour to resolve a dumped price situation. It would be difficult, in fact, to envisage circumstances where Australia would decline to accept an undertaking up to an appropriate price level.

Although regarded as a legitimate means of satisfying a dumping complaint, Australia is concerned that such price undertakings could operate unnecessarily or at an inappropriately high level. As a matter of equity, Australia believes that it should additionally be within the province of an importer to request continuation of an injury examination, with a view to determining the necessity for the lodgement of price undertakings by exporters. Amendment of the Code to provide this facility is seen as worthy of future consideration.

Australia has no legislative structures governing either the time of acceptance of such an undertaking or the period that it should remain in force. However, monitoring of any subsequent shipments to ensure observance of the undertaking given should be conducted for an appropriate period of time. In this respect, Australia has the facility for immediate retrieval and scrutiny of computerized customs clearance data; thereby eliminating the need for compilation of returns or updating of exporter pricing information.